



# UNITED STATES PATENT AND TRADEMARK OFFICE

*CLC*  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,871	03/09/2001	Jesse H. Gaytan	40700	6727

1609 7590 11/22/2005

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.  
1300 19TH STREET, N.W.  
SUITE 600  
WASHINGTON,, DC 20036

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
----------	--------------

1615

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/801,871	GAYTAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	NEIL LEVY	1615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,6,8-15,18,21,24-32,35-43 and 45-80 is/are pending in the application.
- 4a) Of the above claim(s) 1,3,6,8-15,18,21 and 31 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 57,58,60 and 73-80 is/are allowed.
- 6) ☒ Claim(s) 32,35-43,45-56,59 and 61-72 is/are rejected.
- 7) ☒ Claim(s) 45-47 and 61-72 is/are objected to.
- 8) ☒ Claim(s) all claims are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Claims 1,3,6,8-15,21,24-31 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on paper # 7.

Claims 57,58,60,73-80 are allowed.

Claims 45-47, 61-72 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 45- 47,61-72 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

45,47 as amended "said acephate" has no antecedent for "said". Claim 65 is redundant.

Claims 32,35,36,42,49,51,52,59 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Masahiko et al.

All the instant components & functions as claimed are disclosed here, but for a statement of the instant binder as a solid at ambient temperature. However, ambient polar temperatures provide solidification , while applicant has not shown the 9-12 polyoxyethylene nonylphenyl ether to be liquid @ ambient temperature.

Claims 32,35,36,41-43,49-56,59 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chan et al 5100667 with ICI '65.

Applicant's arguments for intentional application, rather than chance, are not seen as applicable: Chan knew water to be present (col. 5, top) and dries the product to remove it.

Claims 36-40,48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chan with Kishino et al 4150155.

Chan & Kishino provide phosphoroamidothiolate solid insecticidal formulations.

Claims 32, 35, 41-42, 49, 51 are rejected under 35 U.S.C. 102(e) as being anticipated by \*\* Katayama - 6335026\*.

See example 18- the instant binder @ 5%, < 1 % solvent & acephate; this is an example- binder can be as low as 0.1%(col 2, lines 12-15). Added silica is as low as 1%(claim 14).

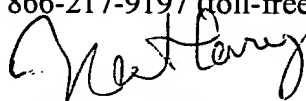
Applicant's arguments filed 8/24/05 have been fully considered but they are not persuasive. Applicant argues the instant claims are to phosphoroamidothiolate solid insecticidal formulations not prepared in the prior art with consequent amounts of solvents & with instant lubricant/binders. However, examiner finds the reference as discussed above, to disclose the instant claims drawn to formulation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL LEVY  
Primary Examiner  
Art Unit 1615

\*\*\*